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Supreme Court of the United States

OCTOBER TERM, 1932

No. 301.

LOUIS K. LIGGETT COMPANY, a Corporation, et al.,
Appellants,

vs.

ERNEST AMOS, as Comptroller of the State of Florida, et al.,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA.

BRIEF FOR APPELLEES

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BRIEF FOR APPELLEES

REFERENCE TO THE REPORT OF THE CASE IN THE COURT BELOW.

The opinion of the Court below was filed April 4, 1932, and is cited Louis K. Liggett Company, et al., vs. Amos, State Comptroller, et al., 141 So. 153 (not yet printed in Florida Reports).

THE PARTICULAR STATUTE ASSAILED AND INVOLVED.

The entire statute under attack is printed in an appendix to this brief.

The Act was passed at an Extraordinary Session of the Legislature of Florida, 1931, and became Chapter 15,624

of the Laws of Florida. Its pertinent provisions may be summarized as follows:

Section 1 makes it unlawful for any person, firm, corporation, association or co-partnership, whether foreign or domestic, to operate, maintain, open or establish any store in this State without first having obtained a license so to do from the Comptroller of the State, or the Tax Collector of the county in which the same is located.

Section 2 relates to the manner and method of making application for the license required by Section 1.

Section 3 relates to the examination of the application and the issuance of the license required by the County Tax Collector, or Comptroller as the case may be.

Section 4 fixes the time for the expiration of licenses and relates to the requirement for renewal of same, the date on which the same shall lapse and imposes a penalty of 25% of the license tax for failure to renew the license on or before the 10th day of November next after the expiration of the license for the preceding fiscal year.

Section 5 of the Act fixes the annual license fee or tax imposed by the State for the privilege of opening, establishing, operating or maintaining stores or mercantile establishments in the State upon a graduated scale ranging from $5.00 for one store to $40.00 for each additional store in excess of 75 where all of such stores are located in one county, and/or $50.00 for each additional store in excess of 75 where the same are located in different counties.

Section 6 provides for the issuance of license on or after the first day of April of any fiscal year at one half of the full rate prescribed by Section 5 of the Act.

Section 7 makes the provisions of the Act applicable to every person, firm, corporation, co-partnership or association, either domestic or foreign, which is controlled or held with others by majority stock ownership, or ultimately controlled or directed by one management or association of ultimate management.

Section 8 of the Act defines "store" as used in the Act to mean and include any store or stores, or any mercantile establishment or establishments owned, operated, maintained or controlled by the same person, firm, corporation, co-partnership, or association, either domestic or foreign, in which goods, wares or merchandise of any kind are sold at retail, but provides that the term "store" shall not include filling stations engaged exclusively in the sale of gasoline or other petroleum products.

Section 9 makes a violation of any of the provisions of the Act a misdemeanor and provides the punishment therefor.

Section 10 makes the County Tax Collector subject to removal from office for certain acts of commission or omission in relation to the issuance of license.

Section 11 imposes a County License Tax of 25% of the State License Tax upon each store as in said Act defined, and authorizes the municipalities of the State to levy a Municipal License Tax of 25% of the State Tax but provides that the tax levied by or for the counties and municipalities shall be graded only on the number of stores situated in such county or munici-

pality, respectively, notwithstanding the applicant may own other stores beyond the limits of such county or municipality.

Section 12 requires all licenses provided for in the Act to be issued by the County Judges of the several counties of the State and turned over to the County Tax Collector of their respective counties, and/or the Comptroller of the State of Florida, to be by them countersigned and delivered to the licensees upon the payment of the license tax required.

Section 13 relates to the fee to be charged by the County Judge of each county for his services in issuing the licenses.

Section 14 repeals all laws and parts of laws in conflict with said Act.

Section 15 provides a saving clause in case any Section, provision or clause in the Act is declared unconstitutional.

By Section 16 the Act became effective July 3, 1931.

CONTROLLING QUESTIONS INVOLVED.

1. DOES CHAPTER 15,624, LAWS OF FLORIDA, ACTS OF 1931, VIOLATE THE DUE PROCESS CLAUSE, OR THE EQUAL PROTECTION OF THE LAWS CLAUSE OF THE FEDERAL CONSTITUTION?
2. DOES CHAPTER 15,624, LAWS OF FLORIDA, ACTS OF 1931, AS ADMINISTERED BY THE COMPTROLLER OF THE STATE OF FLORIDA VIOLATE ANY RIGHT GUARANTEED TO THE APPELLANTS BY THE CONSTITUTION OF THE UNITED STATES?

ARGUMENT.

Point 1. DOES CHAPTER 15,624, LAWS OF FLORIDA, ACTS OF 1931, VIOLATE THE DUE PROCESS CLAUSE, OR THE EQUAL PROTECTION OF THE LAWS CLAUSE OF THE FEDERAL CONSTITUTION?

Article IX of the Constitution of Florida relates to taxation and finance.

Section 1 of Article IX of the Florida Constitution requires the Legislature to provide a uniform and equal rate of taxation, except as to intangible property and requires the Legislature to prescribe such regulations as shall secure a just valuation of all property, both real and personal, excepting such property as may be exempted by law for municipal, educational, literary, scientific or charitable purposes. This requirement as to uniformity and equality in the rate of taxation has been uniformly construed by the Supreme Court of Florida to apply only to property taxes.

The authority for the Legislature to impose excise or license taxes is found in Section 5 of Article IX of the Constitution of Florida, which is in part as follows:

> "The Legislature may also provide for levying a special capitation tax, and a tax on licenses."

Chapter 15,624, Laws of Florida, Acts of 1931, was enacted in pursuance of the authority of that part of Section 5 of Article IX of the Constitution last above quoted.

The Supreme Court of Florida in the case of Jerome H. Sheip Company, et al., vs. Amos, State Comptroller, 100 Fla. 863, 130 So. 699, clearly distinguished the rule applicable in the imposition of excise or license taxes from that applicable to ad valorem or property taxes, as follows:

> "In the direct imposition of a State excise upon taxable privileges, the Legislature exercises a power of extensive scope. Organic requirements as to uniformity and valuation, applicable to ad valorem taxes, do not apply to excises, since the latter are not regarded as a 'tax' within the meaning of constitutional limitations requiring uniformity of rates and just valuations.

> Jackson v. Neff, 64 Fla. 326, 60 So. 350; Hiers v. Mitchell, 95 Fla. 345, 116 So. 81. In the imposition of excises, the only organic limitations upon the State are that due process, equal protection, and contract rights shall be observed, and that interstate commerce shall not be burdened nor federal functions interferred with. Therefore there must be a reasonable basis of classification, and there must be geographic, as distinguished from intrinsic, uniformity. Amos, v. Mathews (Fla.) 126 So. 308; Amos v. Gunn, 84 Fla. 285, So. 615; Jackson v. Neff, supra; Peninsular Casualty Co. v. State, 68 Fla. 411, 67 So. 165; Panhandle Oil Co. v. Mississippi, 277 U. S. 218, 48 S .Ct. 451, 72 L. Ed. 857, 56, A. L. R. 583. See, also, Newell v. Green, 169 N. C. 462, 86 S E. 291. Unless the classification, or the amount of the tax, is purely arbitrary and unreasonable under every conceivable condition in practical affairs, the courts will not interfere."

The main attack made in the bill relates to the classification of stores as a basis for the tax levied and the controlling question to be determined on this appeal is whether the classification made by the Legislature is reasonable and based upon substantial differences between the businesses separately classified. Such difference may not be great and if the classification does not result in arbitrary discrimination, it is not a denial of due process or equal protection of the laws and the Court will not hold such classification invalid unless it clearly and unmistakably appears to be unreasonable and arbitrary. In State ex rel. Bonsteel v. Allen, 83 Fla. 214, 91 So. 104, 26 A. L. R. 735, after pointing out that the rule in Florida is somewhat more stringent than that applied in the Federal Courts in testing the constitutional validiy of Acts imposing excises, it is said:

> "While it is in the power of the courts to declare laws levying license taxes void because of the unreasonable and arbitrary exercise of the State's power, either in the classification or fixing the amount of license, such power will not be exercised unless the amount of the license tax is so great or the classification so palpably arbitrary to be beyond the necessities of the legislation, or the equivalent of the impairment of the constitutional rights of property, or tend to prevent a great number if not all persons from pursuing otherwise lawful occupations which do not impair public safety, public health or destroy property."

The degree of distinction between businesses, trades or occupations as a basis for classification in the imposition of excise taxes is a matter for legislative determination and if there is any substantial distinction it is sufficient as a basis for classification purposes. In other words, the fact that a statute discriminates in favor of a certain class does not make it arbitrary, if the discrimination is founded upon a reasonable distinction.

A very wide latitude of discretion must be conceded to the Legislature in the classification of occupations, trades or businesses in the imposition of excise or license tax, and unless such classification is purely arbitrary or capricious and not founded upon any substantial differences, the Court will sustain and uphold the same as a reasonable exercise of legislative power and discretion.

It is not the function of the Courts to review the wisdom of the means adopted by the Legislature in imposing excises. Courts deal with legislative power not wisdom. If the Court determines that the power to impose the excise exists in the legislative department, judicial duty is at an end.

In making classification for the purpose of imposing excise or license taxes it will be presumed that such classification was based upon a reasonable distinction, and that the Legislature had sufficient facts as evidence of the distinction or differences as a basis for the classification made.

Two cases have recently been before this Court involving attacks upon State statutes imposing excise or license taxes on chain stores, in each of which the statutes were upheld and the classifications made by the Legislature in each instance was sustained as being reasonable. I refer to the following cases:

> State Board of Tax Commissioners of the State of Indiana v. Jackson, 283 U. S. 527, 75 L. Ed. 1248, decided May 18, 1931;
>
> Great Atlantic & Pacific Tea Company, et al., v. Maxwell, 284 U. S. 575-6, 76 L. Ed. 500, decided Oct. 26, 1931.

The District Court of the United States for the Southern District of Indiana held the Indiana Chain Store statute unconstitutional and its decree was reversed by a 5 to 4 decision of this Court in State Board of Tax Commissioners of Indiana v. Jackson, *supra.*

The North Carolina Chain Store statute was held valid and constitutional by the Supreme Court of North Carolina in Great Atlantic & Pacific Tea Company, et al., v. Maxwell, 154 S. E. 838, from which an appeal was taken in this Court where the judgment of the North Carolina Supreme Court was affirmed by a memorandum decision in Great Atlantic & Pacific Tea Company v. Maxwell, 284 U. S. 575-6, 76 L. Ed. 500.

The Indiana statute prescribes a graduated scale of fees ranging from $3.00 for one store to $25.00 on each store in excess of 20.

The license fees under the North Carolina statute are not graduated but are the same on all stores regardless of number, being $50.00 on each and every store operated in excess of one.

The Florida statute here under attack (Chap. 15,624) is slightly different from the Indiana statute in that the graduated scale of fees applied to multiple or chain stores operated in different counties is slightly higher than that applied to the same number of stores operated in one county. If this distinction is based upon any substantial difference of advantage enjoyed by chain stores operating in different counties over those operating a like number of stores in the same county, then the classification is, in that respect, reasonable and should be sustained. The matter of distinction as a basis for classification was a question for legislative determination and in the absence of a contrary showing, it should be presumed that the Legislature found such facts to exist.

This Court discussing the discretion conceded to the legislative power of the States in the matter of classification as a basis for the imposition of an excise or license tax in Brown-Forman Co. v. Kentucky, 217, U. S. Text 573, 54 L. Ed. Text 887, 30 S. Ct. 578, said:

> "A very wide discretion must be conceded to the legislative power of the State in the classification of trades, callings, businesses or occupations which may be subjected to special forms of regulation or taxes through an excise or license tax. If the selection or classification is neither capricious or arbitrary, and rests upon some reasonble consideration of difference or policy, there is no denial of equal protection of the law."

It is the privilege granted by the State to engage in and operate the particular line of business that is taxed, and if the privilege enjoyed by chain stores is greater than that enjoyed by single store operators, it is not unreasonable or arbitrary to require greater license fees for the enjoyment of the greater privileges.

The rule for legislative determination as to the value of privileges granted by the State and enjoyed by the licensee in making classification for the imposition of license taxes was stated by this Court in State Board of Tax Commissioners v. Jackson, 283 U. S. Text 541, 75 L. Ed. Text 1258, as follows:

> "In view of the numerous distinctions above pointed out between the business of a chain store and other types of store, we can not pronounce the classification made by the statute to be arbitrary and unreasonable. That there are differences and advantages in favor of the chain store is shown by the number of such chains established and by their astonishing growth. More and more persons, like the appellee, have found advantages in this method of merchandising and have therefore adopted it. What was said in Metropolis Theatre Co. v. Chicago, 228 U. S. 61, 57 L. Ed. 730, 33 S. Ct. 441, *supra*, is quite applicable here;
>
> "The distinction obtains in every large city of the country. The reason for it must therefore be substantial, and if it be so universal in the practice of the business it would seem not unreasonable if it be adopted as the basis for governmental action.' "

This, as we construed it, in effect means that what is known, generally, is known to the Legislature and that the Legislature may take its general knowledge of facts and

conditions as a basis for its determination of the reasonableness of classifications made the basis for the taxation of privileges granted by it and the presumption attaches that in making such classifications the Legislature had before it knowledge of such conditions justifying the distinction made, and the burden is upon him who complains of the classification to clearly and unmistakably demonstrate that there was no reasonable basis for the distinction made and that such classification was purely arbitrary and capricious. In other words, the rule stated by the Court, as applied to the instant case, is that the fact of the growth and expansion of business and the increase in the number of stores operated is evidence that greater privileges are enjoyed by such expansion and that the Legislature may take this as a basis for making classifications in taxing such privileges.

The principle we are contending for is to the effect that there is a real and substantial difference between merchants who exercise the privilege of carrying on their business by means of mutiple or chain stores on the one hand and those who maintain and operate only one store, the general knowledge of which may be used by the Legislature as a basis for classification, and that the imposition of a license tax on the one class at a greater rate than is imposed on the other is not an unjust, unreasonable or arbitrary discrimination between the two classes, for the reason that merchants who operate multiple or chain stores and pay a higher tax therefor have, and exercise a more valuable privilege than those who operate only one store. This is the same principle adopted by the Supreme Court of North Carolina and approved by this Court. Thus in Great Atlantic & Pacific Tea Company, v. Maxwell, 154 S. E. 838, Text 843, affirmed by this Court in 284 U. S. 575-6, 76 L. Ed. 500:

"In view of the foregoing well settled principles of constitutional law, both state and federal, applicable to the question presented for decision by this appeal, we are of opinion that there was no error in the finding and conclusion of the court below that the classification made by the General Assembly of this State in Section 162, Special Laws of North Carolina, Session 1929, of the business of maintaining and operating branch or chain stores, as therein defined, exclusively for the purpose of taxation is neither unreasonable or arbitrary; that there is a real and substantial difference between merchants who exercise the privilege of carrying on their business in this State, by means of two or more stores, and those who maintain and operate only one store and that this difference appears on the face of the statute without regard to the findings of fact made by the Court; that the imposition of a license tax on the one class without the imposition of a like tax on the other class of merchants is not an unjust, unreasonable or arbitrary discrimination between the two classes, for the reason that merchants who are required to obtain licenses and to pay the tax, have and exercise a more valuable privilege than those who are required to do neither; that therefore, the statute is not in violation of either the State or Federal Constitution."

The same rule applied in the Indiana and North Carolina cases may be applied in the instant case in determining whether the Legislature was justified in making a distinction in the tax imposed on stores operated in one county and the same number operated in different counties.

If the Legislature is justified in assuming as a basis of of classification that an increase in the number of stores operated carries a corresponding increase in the privileges

granted, then on the same principle of reasoning it would be justified in taking the view that an operator of stores branching out in different counties has increased privileges over those enjoyed by operating the same number in the same county. In other words, it is reasonable to assume that if the same opportunity and advantages could be had by operating all stores in one county, where it would be easier, more convenient and economical to supervise such operation, that this would be done. On the other hand, it is reasonable to assume that the successful merachant distributes his stores out in different counties and centers of population only because he finds it to his advantage so to do. It necessarily requires greater time and expense in going to and supervising stores located in different counties of the State, and the successful business man would not voluntarily entail upon his business this additional expense were it not advantageous to do so.

It is not difficult to conceive some of the advantages to be had by operating stores in more than one county over the privileges enjoyed where the operation is confined to only one county. One illustration is, one of the greater territory to draw from, thus increasing the opportunities for a greater volume of business. If all the stores are located in the same county or community they are confined to the same territory from which to draw trade and become competitors with each other, whereas if the same number of stores are distributed and located in different counties the field for operation is correspondingly increased and the opportunity for a greater volume of trade and expansion of business enhanced. This distinction alone is sufficient for the basis of classification made in Chapter 15,624, Laws of Florida, Acts of 1931. The differences in the privileges enjoyed in the one over the other need not be great to justify a different classification, as was held by this Court

in State Board of Tax Commissioners of Indiana v. Jackson, *supra*:

> "It is not the function of this Court in cases like the present to consider the propriety and justness of the tax, to seek for motives or to criticize the policy which prompted the adoption of the legislation. Our duty is to sustain the classification adopted by the Legislature if there are substantial differences between the occupations separately classified. Such differences need not be great. The past decisions of the Court make this abundantly clear."

There is nothing in the Federal Constitution requiring the States to adopt an iron rule of equality in taxation, nor to prevent variety or differences in taxation, nor to prohibit the selection of subjects or the classification for taxation purposes of properties, businesses, trades, callings or occupations. Thus in State Board of Tax Commissioners of Indiana v. Jackson, *supra*:

> "The principles which govern the decisions of this Court are well settled. The power of taxation is fundamental to the very existence of the government of the states. The restriction that it shall not be so exercised as to deny to any the equal protection of the laws does not compel the adoption of an iron rule of equal taxation, nor prevent variety or differences in taxation, nor discrimination in the selection of subjects, or the classification for taxation of properties, businesses, trades, callings or occupaions."

By way of comparison the scale of fees fixed in the Florida statute herein attacked (Chap. 15,624) are somewhat higher than those fixed in the Indiana statute, which was upheld in State Board of Tax Commisisoners of Indiana v.

Jackson, *supra,* but on the average are very much less than the tax imposed by the North Carolina statute and upheld by the Supreme Court of that State in Great Atlantic & Pacific Tea Company, et al., v. Maxwell, 154 S. E. 838, and which case was by this Court affirmed in 284 U. S. 575-6, 76 L. Ed. 500. It is only in the last bracket in Section 5 of the Florida statute, *supra,* that the tax on stores located in different counties reaches the level fixed by the North Carolina statute on each store in excess of one, to-wit: $50.00; and under the Florida statute this tax of $50.00 applies only to the stores operated in different counties in excess of 75. To use Table 4 in the brief for appellants, illustrating the average tax per store on 226 stores operated in different counties, it appears that the average on each store is only $42.76, whereas under the North Carolina statute the tax imposed on each store in excess of one is $50.00.

This Court is not concerned with the policy or wisdom of legislation but only with the power of the Legislature to impose the tax complained of, and these comparisons are made merely for the purpose of demonstrating that while the tax under the Florida statute exceeds that imposed by the statute of Indiana yet on the whole it is less than that fixed by the General Assembly of North Carolina, and we think it is fairer.

If the multiplication and growth in the number of stores operated is an evidence of increasing privileges enjoyed, then it is fair to tax those privileges on a graduated scale to the extent of and in proportion to the development and expansion of the business. It is to be remembered, however, that there is no iron rule in such matters, the only question being as to the reasonableness of the classification.

THERE IS NO UNLAWFUL DISCRIMINATION IN FAVOR OF FILLING STATIONS.

The contention is made by Appellants that the Act (Chap. 15,624) discriminates unlawfully in favor of filling stations by reason of the following proviso in Section 8 of the Act, to-wit:

> "Provided, however, that the term 'store' shall not include filling stations engaged exclusively in the sale of gasoline and other petroleum products."

Under the rule imposing excise or license taxes that the Legislature may make reasonable classifications, it is also well settled that it may exempt certain classes of businesses, trades or occupations from the payment of such tax, the only requirement being that the tax imposed must apply alike to all in the same class.

> State Board of Tax Commissioners of Indiana v. Jackson, *supra;*
>
> Bell's Gap R. R. Co. v. Pennsylvania, 134 U. S. 232, 33 L. Ed. 892;
>
> Southwest Oil Co. v. Texas, 217 U. S. 114, 54 L. Ed. 688;
>
> Brown-Forman C. v. Kentucky, 217 U. S. 563, 54 L. Ed. 883.

Aside from the rule just stated we can not escape the observation that the provision excluding filling stations, engaged exclusively in the sale of gasoline and other petroleum products, from the operation of the tax imposed under Chapter 15,624 does not discriminate in favor of filling stations, for the reason that this exclusion leaves filling stations subject to the tax imposed upon the sale of gasoline and other like products of petroleum, which tax in propor-

tion to the value of the goods sold is far in excess of that imposed by Chapter 15,624.

The pertinent provisions of Chapter 15,659, Laws of Florida, Acts of 1931, relating to the tax imposed on filling stations, are as follows:

> "Section 1. Every dealer in gasoline or other like products of petroleum in this State, under whatever name designated, shall pay a license tax of Five Dollars ($5.00) to the State, and in addition thereto, a tax herein termed 'gas tax' of six (6c) cents per gallon for every gallon of gasoline or other like products of petroleum sold by him, and upon which the tax herein provided has not been paid, or the payment whereof has not been assumed by a person preceding him in the handling of said lot of products, such tax of six (6c) cents per gallon being made up of two separate taxes, * * *"

In addition to the tax imposed on filling stations under the provisions of Chapter 15,659, Laws of Florida, Acts of 1931, an additional tax of 1c per gallon is imposed by Chapter 15,788, Laws of Florida, Acts of 1931, the pertinent provisions of which are as follows:

> "Section 1. That every dealer in gasoline or other like products of petroleum under whatever name designated in this State, in addition to all other taxes required by law shall pay an additional tax of one (1) cent per gallon for every gallon of gasoline or other like products of petroleum, under whatever name designated, sold by him on which the tax herein provided has not been paid or the payment whereof has not been assumed by a person preceding him in the handling of said lot of products." * * *

Thus under the Florida law dealers in gasoline and other like products of petroleum pay a tax of $5.00 on each filling station operated, and in addition thereto 7c per gallon on each gallon of gasoline or other like products of petroleum sold.

These latter Acts relating to dealers in gasoline were also enacted by the Legislature of 1931. In addition to the tax of $5.00 for each filling station and 7c a gallon on each gallon of gasoline sold under the Florida statute, the Federal Revenue Act of 1932 imposes a tax of 1c per gallon on each gallon of gasoline sold, making in all 8c per gallon exacted from operators of filling stations in addition to $5.00 flat fee for each filling station operated.

Considering the amount of the tax imposed, it readily appears that the operator of filling stations is taxed far in excess of the tax imposed on operators of stores under the provisions of Chapter 15,624, and that the discrimination, if any, is against the filling station operator rather than in his favor.

It may be argued that the gasoline tax is passed on to and paid by the consumer as was held by the Court in Panhandle Oil Co. v. Mississippi, 277 U. S. 218, 48 S. Ct. 451, 72 L. Ed. 857, but the same argument can be applied as to the tax imposed on stores under the provisions of Chapter 15,624. The Legislature placed the tax in each case upon the dealer, and it is immaterial to a consideration of the questions involved in this case who ultimately pays the tax. The Legislature evidently felt that filling stations were paying their portion of taxes and they should not be further burdened. And whether the tax is paid by the dealer or the consumer, the fact is that gasoline produces more revenue than any other commodity of commerce under our system of taxation.

CHAPTER 15,624, LAWS OF FLORIDA, ACTS OF 1931, DOES NOT BURDEN INTERSTATE COMMERCE.

A State excise tax which affects inter-state commerce, not directly but incidentally and remotely, is valid where it is clear that it is not interposed with the covert purpose or with the effect of defeating Federal constitutional rights.

> Hump Hairpin Mfg. Co. v. Emerson, 258 U. S. 290, 42 Sup. Ct. Rep. 305, 66 L. Ed. 622.

A State may require payment of an occupation or license tax from one engaged in both intra-state and inter-state commerce and delegate the same powers to its municipalities.

> Sprout v. South Bend, 277 U. S. 163, 48 Sup. Ct. Rep. 502, 72 L. Ed. 833.

The bill in this case alleges that one of the appellants stores goods in warehouses located in Florida for distribution to points both in and out of the State, and it is claimed that the Act burdens inter-state commerce in that appellant is required to pay a license tax based upon the value of the goods store in warehouses in the State for distribution to points outside the State, as well as supplying the stores operated in the State. In this appellants have clearly misconceived the plain intent and scope of the Act.

By Section 1 of the Act it is made unlawful only for any person, firm, corporation, association or co-partnership, whether foreign or domestic, to operate, maintain, open or establish stores in this State (Florida).

The first paragraph of Section 5 of the Act requires that every person, firm, corporation, association or co-partnership opening, establishing, or maintaining one or more stores or mercantile establishments within this State (Flor-

ida), under the same general management, supervision, or ownership, shall pay the license fee thereinafter prescribed for the privilege of opening, establishing, operating or maintaining such stores or mercantile establishments.

Section 2 of the Act requires an application by any person, firm, corporation, association or co-partnership to operate, maintain, open or establish a store in this State (Florida), such application to be made on the form prescribed and furnished by the Comptroller of the State of Florida and shall set forth the name of the owner, manager, trustee, lessee, receiver or other person desiring such license and the name of the store and location and the full actual value of the stock of goods, wares, merchandise and commodities from which sales are to be made, including all goods, wares, merchandise and commodities owned by the applicant and held in storage to be sold in or through such store.

The last paragraph of Section 5 of the Act imposes a tax of $3.00 for each and every One Thousand Dollars ($1,000.-00) of value of stock carried in each store for sale in such store.

It is contended that by reason of the two latter provisions the appellants are required to pay the tax on goods stored in warehouses in Florida, a part of which may be distributed to points out of the State. No such requirement can be read into the Act. The provision requiring the application to show the full actual value of the stock of goods, wares, merchandise and commodities from which sales are to be made, including all goods, wares, merchandise and commodities owned by the applicant and held in storage to be sold in and through such stores refers and relates to those goods, wares, merchandise and commodities held in storage to be sold in or through the store for opera-

tion of which the application is made, to-wit: A store in this State (Florida).

The tax of $3.00 for each and every One Thousand Dollars ($1,000.00) of value of stock carried in each store or for sale in such store, refers to the store for which the license tax is imposed in the first paragraph of Section 5 of the Act, to-wit: "Store or mercantile establishments within this state" (Florida).

There is no where in the Act any provision imposing a tax upon the value of the stock carried except stock carried in stores or mercantile establishments in the State of Florida for sale in such store.

If, however, the contention of appellants on this point were true that the tax attaches on goods stored in the State for distribution to points outside the State, such circumstances would affect interstate commerce only incidentally and remotely and would not render the Act invalid. The main purpose and intent of the Act was and is to impose a license tax for revenue purposes upon the business of operating stores or mercantile establishments only in the State, and no where in the entire Act is to be seen any intent on the part of the Legislature to interfere with or regulate inter-state commerce.

MUNICIPALITIES MAY LAWFULLY IMPOSE A LICENSE TAX OF 25% OF THE STATE TAX IMPOSED BY CHAPTER 15,624.

Chapter 15,624, Laws of Florida, Acts of 1931, is further attacked by reason of the provisions of Section 11 thereof, which imposes a County license tax of 25% of the State license tax upon each store, as in said Act defined, and which authorizes each incorporated municipality of the State to levy a municipal tax of 25% of the State tax imposed by said Act. It is provided in Section 11 of the Act

that the tax levied by or for the several counties and municipalities shall be graduated only on the number of stores situated in such county or municipality, respectively, notwithstanding the applicant may own other stores beyond the limits of such county or municipality as the case may be.

Section 5 of Article IX of the Constitution of Florida, which reads as follows:

> "The Legislature shall authorize the several counties and incorporated cities or towns in the State to assess and impose taxes for county and municipal purposes, and for no other purposes, and all property shall be taxed upon the principles established for State taxation. But the cities and incorporated towns shall make their own assessments for municipal purposes upon the property within their limits. The Legislature may also provide for levying a special capitation tax, and a tax on licenses. But the capitation tax shall not exceed one dollar a year and shall be applied exclusively to common school purposes."

has been construed by the Supreme Court of Florida as authority for legislative delegation to the municipalities to select the occupations upon which license taxes shall be imposed for municipal purposes, and the right to fix the amount of license taxes imposed by them. The Act under consideration, however, limits the amount of the county and/or municipal tax to 25% to that imposed by the Act for State purposes, whereas most of the License Tax Acts of Florida authorize the municipalities to impose like taxes in the amount not exceeding fifty per cent (50%) of the State tax.

In Canova v. Williams, 41 Fla. 509, 27 So. 30, the State Supreme Court, in construing the provisions of Section 5

of Article IX of the Florida Constitution, held that under the provision that the Legislature may provide for the levying of a tax on licenses by counties, incorporated cities or towns, the Legislature may delegate to the cities and towns the right to select the occupations upon which they may impose license taxes for municipal purposes, and the right to fix the amount of license taxes to be imposed by them.

In Ferguson v. McDonald, 66 Fla. 494, 63 So. 915, it was said that there is no express limitation upon the Legislature's power to authorize a municipality to levy a license tax other than it shall not violate a fundamental law.

The General Revenue Law of Florida, Chapter 4115, approved June 2, 1893, imposed license taxes for the privilege of engaging in the various businesses, professions and avocations mentioned in said Act, and authorized the counties and incorporated cities and towns to impose a like tax of as much as fifty per cent. (50%) of the State tax thereby imposed. This Act was upheld by the Supreme Court of Florida in Osborne v. State, 33 Fla. 162, 14 So. 588, where in discussing the intra-state character of the Act it was held that a State statute which imposes a tax in general terms on the doing of specified kinds of businesses or the pursuit of designated occupations in the State and requires that a license shall be taken out before any such business or avocation shall be done or engaged in, should not be construed to apply to any business of the kind that may constitute inter-state commerce, but only to a business that is domestic or state commerce and to persons engaged or intending to engage in such domestic or state business. In discussing the requirement for the payment of county and municipal taxes, in addition to the State tax imposed by the Act, the Court said:

"Any county may impose on a company doing business within its limits a license tax of not more than 50 per cent. of the state tax, and thus require the company to pay it not more than 50 per cent. of the amount such company has to pay to the state as a license tax for doing business at any city, town, or village, within the provisions of the act. If one company is doing business in, say, three places, one of which belongs to one class, another to another class, and the third to still another, the county may impose a tax on the company for each of the three places, not exceeding 50 per cent. of the amount of the state tax for that place. Likewise, any incorporated city or town may impose on any such company doing business within its limits a municipal license tax, not exceeding 50 per cent. of the state license tax imposed upon it for that place by the statute. Whether or not this construction of the statute will result in rendering it impossible for express companies to carry on within our borders business that is local to the state is a consideration for the lawmaking power, but it cannot be invoked properly to influence a construction that is contrary to the plain meaning of the statute, made more palpable still by a comparison of it with former legislation as to the same matter."

The power of legislative delegation to municipalities to regulate and tax businesses, occupations and avocations within such municipalities on a reasonable basis with like regulations and taxes imposed for State purposes, has been recognized and sustained by this Court.

Sprout v. South Bend, 277 U. S. 163, 48 Sup. Ct. Rep. 502, 77 L. Ed. 833;

Erb v. Morasch, 177 U. S. 584, 20 Sup. Ct. Rep. 819, 44 L. Ed. 897;

Mackay Tel. & Cable Co. v. Little Rock, 250 U. S. 94, 39 Sup. Ct. Rep. 428, 63 L. Ed. 863

We respectfully submit that the tax imposed for county purposes and the tax authorized to be imposed for municipal purposes under Section 11 of the Act is very reasonable in amount It is to be noted that such tax, whether county or municipal, is based only on the number of stores situated in the particular county or municipality, and can not be calculated upon the basis of the number of stores operated by the licensee in different counties. Therefore, the argument against the State tax imposed being increased by reason of the operation of stores in different counties of the State does not and can not be applied to the county and municipal tax imposed and authorized by Section 11 of the Act.

CHAPTER 15,624 DULY AND REGULARLY ENACTED AS REQUIRED BY THE CONSTITUTION OF FLORIDA.

It is contended that Chapter 15,624 was enacted in violation of Section 8 of Article IV of the Constitution of Florida in that certain amendments thereto adopted in the Senate were not adopted by a two-thirds vote, neither was the subject matter of said Act embraced within the Governor's Proclamation calling the Legislature in Extraordinary Session at which said Act was passed.

Section 8 of Article IV of the Constitution of Florida is as follows:

"The Governor may, on extraordinary occasions, convene the Legislature by proclamation, and shall in his proclamation state the purpose for which it is to

be convened, and the Legislature when organized shall transact no Legislative business other than that for which it is especially convened, or such other Legislative business as the Governor may call to its attention while in session, except by a two-thirds vote of each house."

In construing Section 8 of Article IV of the State Constitution and in disposing of the contention of appellants just stated the Supreme Court of Florida in Louis K. Liggett Company v. Amos, 141 So. 154 (not yet printed in Florida reports), said:

"Section 8 of Article 4 of the Constitution provides for calling the Legislature in extraordinary session, and limits legislative business transacted at such session to that stated in the proclamation of the Governor, calling the session or that called to the attention of the Legislature while in session or that initiated while in session by a vote of two-thirds of each house. We think the subject matter of Chapter 15,624 was fully comprehended in the proclamation of the Governor calling the Legislature in extraordinary session, but, if it was not so comprehended, the record discloses that both the House of Representatives and the Senate agreed by a two-thirds vote to receive and consider committee substitute for House Bill 8-X which was finally adopted and became Chapter 15,624. The two-thirds vote required by Section 8 of Article 4 applies only to the matter of taking up 'legislative business' for consideration not embraced in the Governor's proclamation or called by him to their attention while in session. After agreeing by two-thirds vote to consider any 'legislative business,' it then takes the regular

course under the rules, and may be amended, adopted, or rejected by a majority vote. For all the record shows, Chapter 15,624 was adopted by a two-thirds vote."

Chapter 15,624 was enacted as a revenue measure and its subject matter was clearly within the purview of the Executive Proclamation calling in session the Legislature at which said Chapter was enacted.

The Legislature is not confined to matters stated in the Governor's Proclamation but it may judge for itself the matter of importance and need for legislative action when convened in Extraordinary Session, provided the proposed legislation is initiated upon the concurrence of two-thirds of each house. In other words, the requirement for a two-thirds vote relates only to the matter of taking up business not called to the attention of the Legislature by the Governor and does not refer to or require a two-thirds vote on each and every step taken in enacting laws after the same has been initiated by a two-thirds vote. It is respectfully submitted therefore, that there is nothing in this contention of appellants.

Point 2. DOES CHAPTER 15,624, LAWS OF FLORIDA, ACTS OF 1931, AS ADMINISTERED BY THE COMPTROLLER OF THE STATE OF FLORIDA VIOLATE ANY RIGHT GUARANTEED TO THE APPELLANTS BY THE CONSTITUTION OF THE UNITED STATES?

It is claimed by appellants (printed record, pages 49-51) that the Comptroller of Florida, under the advice of the Attorney General, is undertaking to administer Chapter 15,624 in a manner so as to create sundry exemptions and exceptions as to certain merchants, which exemptions and exceptions are alleged to be wholly unwarranted and to deprive appellants of the equal protection of the law con-

trary to Sections 1, 4 and 12 of the Florida Declaration of Rights and contrary to the Fourteenth Amendment to the Federal Constitution. The only specific instances enumerated in the bill relate to exemption and exception of furniture dealers and dealers in tires and tubes from the tax imposed by Chapter 15,624.

It is alleged in the complaint (printed record, page 53) that this classification by the Comptroller of furniture dealers and dealers in tires and tubes for the imposition of license taxes severally has no reasonable basis and no just relation to the subject matter to which applied, and discriminates unjustly and arbitrarily in derogation of Sections 1, 4 and 12 of the Declaration of Rights of the Florida Constitution and in derogation of the due process and equal protection of the laws clauses of the Fourteenth Amendment to the Federal Constitution.

Furniture dealers and dealers in tires and tubes are separately classified under the General Laws of Florida for the imposition of license taxes and the construction placed upon Chapter 15,624 by the Comptroller with reference to such dealers is in line with the policy of the Legislature of Florida against double taxation.

The license tax imposed upon furniture dealers under the General Laws of Florida is prescribed in Section 1149 of the Compiled General Laws of Florida, 1927, as follows:

> "1149. (893) FURNITURE DEALERS.—Dealers in furniture, with a capital of seventy-five thousand dollars or more, shall pay a license tax of fifty dollars; with a capital less than seventy-five thousand and not less than fifty thousand dollars, shall pay a license tax of thirty-five dollars.
>
> "With a capital less than fifty thousand and not less than twenty-five thousand dollars, shall pay a license

tax of twenty dollars, and with a capital less than twenty-five thousand dollars, shall pay a license tax of ten dollars: Provided, that this does not apply to persons paying a merchant's license."

Thus the tax imposed upon this particular class of dealer is fixed upon a graduated scale of from $10.00 to $50.00 according to capital invested in such business, which scale is in line with that imposed upon chain stores under Section 5 of Chapter 15,624. In addition to the State license tax imposed upon furniture dealers by Section 1149 of the Compiled General Laws of Florida, 1927, Section 1051 of the Compiled General Laws of Florida, 1927, further imposes upon such dealers a county license tax of 50% of the State License Tax and authorizes incorporated cities and towns to impose such further license taxes of the same kind upon such dealers not to exceed 50% of the State License Tax. It thus appears that the county license tax imposed upon furniture dealers and that which the municipalities are authorized to impose is double that imposed and authorized to be imposed by Chapter 15,624 for the same purposes.

Section 1051 of the Compiled General Laws of Florida, 1927, is as follows:

"1051. (804) COUNTY LICENSES LEVIED; CITY LICENSES, AMOUNT.—In every case, not otherwise provided in this Chapter, a county license tax of fifty per cent. of the State license tax is hereby levied and imposed upon any business, profession or occupation mentioned in this chapter and the tax collector of each county in this State is hereby authorized and directed to collect such county license tax when the business, profession or occupation is engaged in, conducted or carried on in any such county and all of the penalties

prescribed by this Chapter for the non-payment of license taxes or for doing business without a license shall extend to and apply to county license taxes whether imposed by this Chapter or any law of the State of Florida: Provided, that incorporated cities and towns, may impose such further license taxes of the same kind upon the same subjects as they may deem proper, unless otherwise provided in this Chapter, but the license taxes so imposed shall not exceed fifty per cent of the State license tax, except as otherwise authorized by law."

Sections 1051 and 1149 of the Compiled General Laws of Florida, 1927, were originally enacted as a part of one and the same Act of the Legislature, to-wit: Chapter 6421, Laws of Florida, Acts of 1913. Section 1051, Compiled General Laws of Florida, being the entire Section 2 of said Chapter 6421, and Section 1149, Compiled General Laws of Florida, being a part of Section 23 of said Chapter 6421, Acts of 1913. Thus it conclusively appears that the county license tax of fifty per cent. (50%) imposed by Section 2 of Chapter 6421, Acts of 1913, which is now Section 1051 of the Compiled General Laws of Florida, and the authority to municipalities to impose a like tax for municipal purposes applies to furniture dealers taxed for State purposes by Section 23 of Chapter 6421, Acts of 1913, which is now Section 1149 of the Compiled General Laws of Florida, 1927.

The license tax imposed upon tire and tube dealers by the General Laws of Florida is upon a graduated scale ranging from Five Dollars ($5.00) to Eighty Dollars ($80.00) according to the population of the City or town in which such business is located and conducted. The State license tax of those engaged in the automobile tire and tube busi-

ness is found in Section 1061 of the Compiled General Laws of Florida, 1927, as follows:

"1061. AUTOMOBILE TIRE AND TUBE DEALERS; STATE TAX.—There is hereby imposed and levied on every person, firm or corporation engaged in the automobile tire and tube business in the State of Florida, a State license tax for each place of business as follows:

"In cities and towns of less than one thousand population, three dollars.

"In cities and towns of less than two thousand population, and more than one thousand population, five dollars.

"In cities and towns of less than five thousand population and more than two thousand population, ten dollars.

"In cities and towns of five thousand population, and less than fifteen thousand population, twenty dollars.

"In cities and towns of fifteen thousand population and less than thirty thousand population, thirty dollars.

"In cities and towns of thirty thousand population and less than fifty thousand population, forty dollars.

"In cities and towns of fifty thousand population, and less than seventy-five thousand population, sixty dollars.

"In all cities and towns of over seventy-five thousand population, eighty dollars.

"Each person, firm or corporation so engaged in such business is hereby required to take out a State license for each place of business and to pay the State license tax herein required and levied for each place of business."

Section 1062 of the Compiled General Laws of Florida, in addition to the State tax imposed by Section 1061, imposes a county tax of fifty per cent. (50%) of the State license tax upon tire and tube dealers.

Section 1062 of the Compiled General Laws of Florida, is as follows:

> "1062. SAME; COUNTY TAX.—In every case where a license fee or tax is imposed in the preceding section, a county license tax of fifty per cent. of the State license tax is hereby levied and imposed. Each person, firm or corporation so engaged in such business is hereby required to take out the county license and to pay the county license tax hereby imposed and levied for each place of business."

Section 1066 of the Compiled General Laws of Florida defines tire and tube dealers, as follows:

> "1066. SAME; WHO ARE AUTOMOBILE TIRE AND TUBE DEALERS.—Every person, firm or corporation who buys automobile tires and tubes or either for resale, or who is engaged in selling automobile tires and tubes or either, whether as a separate and independent business or in connection with any other business, is hereby declared to be an automobile tire and tube dealer."

Sections 1061, 1062 and 1066 of the Compiled General Laws of Florida, 1927, were originally enacted as Sections 1, 2 and 6, respectively, of Chapter 12,412, Laws of Florida, Acts of 1927.

It thus appears that the maximum State tax imposed upon tire and tube dealers, under the quoted provisions of the General Laws of Florida, exceeds the maximum State

tax imposed under the graduated scale of Chapter 15,624 upon chain stores by Thirty Dollars ($30.00) and in addition to the State tax, tire and tube dealers are required to pay a county tax of fifty per cent. (50%) of the State tax as against the requirement that chain stores pay only twenty-five per cent. (25%) for such purposes.

Section 1064 of the Compiled General Laws of Florida, which was originally enacted as Section 4 of Chapter 12,412, Laws of Florida, Acts of 1927, defnies the word "population" as used in Section 1061, Compiled General Laws, as a basis for the imposition of the license tax imposed upon tire and tube dealers, as follows:

> "1064. SAME; 'POPULATION' DEFINED. The word 'population' in Section 1061 shall mean the population shown by the last preceding State or Federal census."

The Court will take judicial notice of the Federal Census report for the year 1930, which shows that Florida has three cities whose population exceeds seventy-five thousand (75,000), to-wit: Jacksonville, Miami and Tampa. So the State license tax imposed upon tire and tube dealers in those three municipalities is Eighty Dollars ($80.00) on each place of business, or almost double that imposed by Chapter 15,624 upon chain stores as shown by the illustration for comparison purposes made in the brief of appellants in case of 226 chain stores located in different counties of the State. In addition to the State tax required of tire and tube dealers located in Jacksonville, Miami and Tampa they must also pay a county tax of fifty per cent. (50%) of the State tax on each place of business or Forty Dollars ($40.00), making a total of One Hundred and Twenty Dol-

lars ($120.00) paid by tire and tube dealers on each place of business in those three cities.

The Court's attention is further respectfully directed to the provisions of Section 1066 of the Compiled General Laws of Florida, above quoted, which requires the payment of the State and county license tax imposed by Sections 1061 and 1062, respectively, of the Compiled General Laws of Florida, upon tire and tube dealers, whether as a separate or independent business or in connection with any other business. To illustrate, if a filling station operator is engaged in selling tires and tubes in addition to gasoline and other petroleum products, he must pay a flat tax of Five Dollars ($5.00) for operating the filling station and 7c per gallon State tax and 1c per gallon Federal tax on each gallon of gasoline sold, and in addition must pay the State and county license tax imposed by Sections 1061 and 1062 of the Compiled General Laws of Florida, for the privilege of selling tires and tubes.

The constitutionality of the Florida Tire and Tube Dealer's License Tax Act (Chapter 12,412, Laws of Florida, Acts of 1927, the same having been brought forward as Sections 1061-1066, inclusive, of the Compiled General Laws of Florida, 1927) was upheld b ythe Supreme Court of Florida in Hiers v. Mitchell, 95 Fla. 346, 116 So. 81, by a unanimous decision.

We have pointed out and set forth provisions of the General Laws of Florida, relating to the imposition of license taxes upon furniture dealers and dealers in tires and tubes in which they are separately classified for the purpose of showing:

(a) The reasonableness of the classification made of and the taxes imposed upon such dealers, as compared with chain stores under the Act attacked in this case, and

(b) To show that the Act of separately classifying furniture dealers and dealers in tires and tubes, and the imposition of license taxes on such dealers computed on the basis peculiar to the particular business, was by the Act of the Legislature and not by the Comptroller in administering the taxation laws.

The administrative officer takes the taxation laws as a whole and administers them according to the intent of the Legislature gleaned from a consideration and comparison of all such provisions of law and not from some particular or isolated provision, and that has been done by the Comptroller in dealing with the different classes of business mentioned by appellants in their complaint and in exacting the taxes applicable to each particular class.

Chapter 15,624, the constitutional validity of which is attacked in this case, does not directly repeal any provision of the General Laws of Florida relating to the separate classification of and imposition of license taxes upon furniture dealers and dealers in tires and tubes, and it can not be said that Chapter 15,624 by implication repeals the provisions of the general law in relation to the separate classification and taxation of the business of dealing in furniture and tires and tubes, unless the legislative intent to repeal such provisions clearly appears from a fair reading and interpretation of Chapter 15,624. The Courts do not favor repeal by implication.

If the Legislature had intended to repeal provisions of the General Law relating to the classification and taxation of the business of dealing in furniture and tires and tubes, it would have been easy to have said so in the provisions of Chapter 15,624, and since there is no expression to that effect the presumption is that it was not so intended.

The Legislature, by the enactment of Chapter 15,624, was dealing with merchants generally as theretofore dealt with by the general license taxation laws of the State, and not those separately classified and taxed, such as furniture dealers and dealers in tires and tubes, and the general repealing clause contained in Section 14 of Chapter 15,624, repealing all laws and parts of laws in conflict with said Act, was intended and does apply only to those provisions of the general license tax laws theretofore in force and applicable to merchants generally as a general class, and was not intended to and does not repeal those provisions of the general laws specially classifying and taxing particular classes of business, such as furniture dealers and dealers in tires and tubes.

What we have heretofore said regarding the legislative power to make clasisfication of businesses, professions and occupations in imposing excise or license taxes, and the authorities cited is applicable to the separate classification and taxation of furniture dealers and dealers in tires and tubes.

To hold the provisions of Chapter 15,624 applicable to furniture dealers and dealers in tires and tubes would subject those dealers to double taxation for the privilege granted by the State, a result not intended by the Legislature and one to be avoided by the Courts if possible.

In discussing distinctions made in classification of business by the Legislature of Mississippi and imposing excise or license tax on such business and the policy adopted generally by the State of avoiding double taxation, this Court, in sustaining an Act of the Legislature of Mississippi taxing the income of individuals derived from business done outside the State and exempting the income of domestic corporations from business carried on outside the State, in

Lawrence v. State Tax Commission, 286 U. S. 276, 76 L. Ed. 1102, said:

> "The statute relieves domestic corporations from the tax only in so far as their income is derived from activities carried on outside the state. The appellant is thus compelled to pay a tax from which his competitors, if domestic corporations, are relieved, and this, it is urged, is so plainly arbitrary as to infringe the equal protection clause.
>
> "But, as there is no constitutional requirement that a system of taxation should be uniform as applied to individuals and corporations, regardless of the circumstances in which it operates, acceptance of this contention would relieve the appellant from the burden which rests on him overcome the presumption of facts supporting constitutionality, which attaches to all legislative acts, and would require us to assume that there is no state of facts reasonably to be conceived which could afford a rational basis for distinguishing, for taxation purposes, between income of individuals and that of domestic corporations, derived from business carried on without the state. Lindsley v. National Carbonic Gas Co. 220 U. S. 61, 78, 79, 55 L. Ed. 369, 377, 378, 31 S. Ct. 337, Ann. Cas. 1912C, 160; Rast v. Van Deman & L. Co. 240 U. S. 342, 357, 60 L. Ed. 679, 687, L. R. A. 1917A, 421, 36 S. Ct. 370, Ann. Cas. 1917B, 455; O'Gorman & Young v. Hartford F. Ins. Co. 282 U. S. 251, 257, 258, 75 L. Ed. 324, 327, 328, 72 A. L. R. 1163, 51 S. Ct. 130.
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> "What the local conditions are in Mississippi and its neighboring states with respect to businesses like the present, carried on across state lines by individuals and corporations, does not appear. How the statutory

provisions now in question are related to others by which a permissible divergence in state policy with respect to the taxation of corporations and of individuals may be effected, is not shown. See General American Tank Car Corp. v. Day, 270 U. S. 367, 373, 70 L. Ed. 635, 638, 46 S. Ct. 234; Interstate Busses Corp. v. Blodgett, 276 U. S. 245, 251, 72 L. Ed. 551, 554, 48 S. Ct. 230; Farmers' & M. Sav. Bank v. Minnesota, 232 U. S. 516, 529, et seq., 58 L. Ed. 706, 712 34 S. Ct. 354. We cannot say that investigation in these fields would not disclose a basis for the legislation which would lead reasonable men to conclude that there is just ground for the difference here made. The existence, unchallenged, or differences between the taxation of incomes of individuals and of corporations in every federal revenue act since the adoption of the 16th Amendment, demonstrates that there may be.

"Apart from other considerations which may have led to the present legislation as an integral part of the state system of taxation of the income of corporations, one which affords a rational basis for the distinction made, is the fact that the state has adopted generally a policy of avoiding double taxation of the same economic interest in corporate income, by taxing either the income of the corporation or the dividends of its stockholders, but not both. See Secs. 5033 (a), 5033 (b) (11), 5033 (b) (8). In the case of corporate income and dividends attributable to business done outside the state and received by stockholders of domestic corporations, the stockholders are taxed, and not the corporation. That was held in Franklin v. Carter (C. C. A. 10th) 51 F. (2d) 345, to be a sufficient ground for upholding a staute of Oklahoma, assailed as denying the equal protection of the laws, which had

substantially the same features as the present statute. See also Conner v. State, 82 N. H. 126, 132, 130 Atl. 357. The question presented thus differs from any raised in Quaker City Cab. Co. v. Pennsylvania, 277 U. S. 389, 72 L. Ed. 927, 48 S. Ct. 553, and F. S. Royster Guano Co. v. Virginia, 253 U. S. 412, 64 L. Ed. 989, 40 S Ct. 560. Compare White River Lumber Co. v. Arkansas, 279 U. S. 692, 73 L. Ed. 903, 49 S. Ct. 457.

"The equal protection clause does not require the state to maintain a rigid rule of equal taxation, to resort to close distinctions, or to maintain a precise scientific uniformity; and possible differences in tax burdens not shown to be substantial or which are based on discriminations not shown to be arbitrary or capricious, do not fall within constitutional prohibitions. Ohio Oil Co. v. Conway, 281 U. S. 146, 159, 74 L. Ed. 775, 781, 50 S. Ct. 310; Southwestern Oil Co. v. Texas, 217 U. S. 114, 121, 54 L. Ed. 688, 692, 30 S. Ct. 496; Brown-Forman Co. v. Kentucky, 217 U. S. 563, 573, 54 L. Ed. 883, 887, 30 S. Ct. 578; State Tax Comrs. v. Jackson, 283 U. S. 527, 537, 75 L. Ed. 1248, 1255, 73 A. L. R. 1464, 51 S. Ct. 540.

Affirmed."

CONCLUSION.

In conclusion we respectfully submit that the enactment of Chapter 15,624 was clearly within the legislative power and discretion; that the classifications made and the taxes imposed are not arbitrary or capricious, but rest upon reasonable bases of distinction and differences and do not unlawfully discriminate against appellants in derogation of Sections 1, 4 or 12 of the Declaration of Rights of the Florida Constitution, or of the "due process" or "equal protection of the laws" clauses contained in the Fourteenth Amendment to the Federal Constitution.

We respectfully urge, therefore, that the decision and judgment of the Supreme Court of Florida, here appealed from, should be affirmed.

CARY D. LANDIS,
Attorney-General.

H. E. CARTER,
Assistant Attorney General.

Counsel for Appellees.

State of Florida

Occupational License Tax on Stores

CHAPTER 15624

AN ACT Requiring Licenses for the Operation, Maintenance, Opening or Establishment of Stores in this State; Prescribing the License and Fees to be Paid Therefor, and the Disposition Thereof, and the Powers and Duties of the Comptroller of the State of Florida and the Tax Collectors of the Several Counties of the State in Connection Therewith, and Prescribing Penalties for the Violation Thereof.

Be It Enacted by the Legislature of the State of Florida:

Section 1. That from and after the first day of October A. D. 1931, it shall be unlawful for any person, firm, corporation, association or co-partnership, whether foreign or domestic, to operate, maintain, open or establish any store in this State without first having obtained a license so to do from the Comptroller of the State of Florida or the Tax Collector of the county in which the same is located as hereinafter provided.

Section 2. Any person, firm, corporation, association or co-partnership desiring to operate, maintain, open or establish a store in this State shall, if the store or stores be all operated within the same county, apply to the Tax Collector of such county, or if more than one store is to be operated and all such stores are not located in the same county, then to the Comptroller of the State of Florida, for a license so to do. The application for a license shall be made on a form which shall be prescribed and furnished by the Comptroller of the State of Florida and shall set forth the name of the owner, manager, trustee, lessee, receiver or other person desiring such license; the name of such store, the location, including the street number of such store, and the full actual value of the stock of goods, wares, merchandise and commodities from which sales are to be made, including all goods, wares, merchandise and commodities owned by the applicant and held in storage to be sold in or through such store, and such other facts as the Comptroller may require. Such application shall be under oath. If the applicant desires to operate, maintain, open or establish more than one such store, all

such stores for which the applicant desires to secure licenses may be listed on one application blank. Each such application shall be accompanied by a filing fee of fifty cents, and by a license fee as prescribed in Section 5 of this Act.

Section 3. As soon as practicable after the receipt of such application, the Tax Collector or the Comptroller, as the case may be, shall carefully examine such application to ascertain whether it is in proper form and contains the necessary and requisite information. If, upon examination, the Tax Collector or Comptroller, as the case may be, shall find that any such application is not in proper form, and does not contain the necessary and requisite information, he shall return such application for correction. If the application is found to be satisfactory and if the filing and license fee as herein prescribed shall have been paid, the Tax Collector or Comptroller, as the case may be, shall deliver to the applicant a license for each store for which an application for a license shall have been made. Each licensee shall display the license so issued in a conspicuous place in the store for which such license is issued.

Section 4. All licenses shall be issued so as to expire on the 30th day of September of each calendar year. On or before the first day of October of each year, every person, firm, corporation, association or co-partnership having a license shall apply to the County Tax Collector or Comptroller of the State of Florida as the case may be, for a new license for the twelve calendar months next ensuing. All applications for renewal licenses shall be made on forms which shall be prescribed and furnished by the Comptroller of the State of Florida. No license shall lapse prior to the 31st day of October of the year next following the year in which such license was issued, and if by such 31st day of October an application for renewal license has not been filed, the Tax Collector or Comptroller, as the case may be, shall notify such delinquent license holder thereof by registered mail, and if application is not made for a renewal license on or before the 10th day of November, next ensuing, the Tax Collector or Comptroller, as the case may be, must collect, in addition to the license fee hereinafter provided, twenty-five per cent of the license tax provided in this Act before issuing the license. The continuation of the business after the expiration of the time limited in the previous license shall constitute a binding agree-

ment on the licensee to pay such penalty. Each such application for renewal license shall be accompanied by filing fee of fifty cents and by the license fee as prescribed in Section 5 of this Act.

Section 5. Every person, firm, corporation, association or co-partnership opening, establishing, operating or maintaining one or more stores or mercantile establishments within this State, under the same general management, supervision or ownership, shall pay the license fee hereinafter prescribed for the privilege of opening, establishing, operating or maintaining such stores or mercantile establishments. The license fee herein prescribed shall be paid annually, and shall be in addition to the filing fee prescribed in Sections 2 and 4 of this Act.

The license fees herein prescribed shall be as follows:

"(1) Upon one store, the annual license fee shall be Five Dollars for each such store.

(2) Upon two stores or more, but not exceeding fifteen stores, where the same are located in any one county, the annual license fee shall be Ten Dollars for each such additional store.

(3) Upon two stores or more, but not to exceed fifteen stores, where the same are located in different counties, the annual license fee shall be Fifteen Dollars for each such additional store.

(4) Upon each store in excess of fifteen, but not to exceed thirty, when all are located in any one county, the annual license fee shall be Fifteen Dollars for each such additional store.

(5) Upon each store in excess of fifteen, but not to exceed thirty, where the same are located in different counties, the annual license fee shall be Twenty Dollars for each such additional store.

(6) Upon each store in excess of thirty, but not to exceed fifty, where all are located in any one county, the annual license fee shall be Twenty Dollars for each such additional store.

(7) Upon each store in excess of thirty, but not to exceed

fifty, where the same are located in different counties, the annual license fee shall be Thirty Dollars for each such additional store.

(8) Upon each store in excess of fifty, but not to exceed seventy-five stores, where all are located in any one county, the annual license fee shall be Thirty Dollars for each such additional store.

(9) Upon each store in excess of fifty, but not to exceed seventy-five, where the same are located in different counties, the annual license fee shall be Forty Dollars for each such additional store.

(10) Upon each store in excess of seventy-five, where all are located in any one county, the annual license fee shall be Forty Dollars for each such additional store.

(11) Upon each store in excess of seventy-five, where the same are located in different counties, the annual license fee shall be Fifty Dollars for each such additional store.

In addition to the above amounts, Three Dollars for each and every One Thousand Dollars of value of stock carried in each store or for sale in such store."

Section 6. Each and every license issued prior to the first day of April of any year shall be charged for at the full rate, and each and every license issued on or after the first day of April of any year shall be charged for at one-half of the full rate as prescribed in Section 5 of this Act.

Section 7. The provisions of this Act shall be construed to apply to every person, firm, corporation, co-partnership or association, either domestic or foreign, which is controlled or held with others by majority stock ownership or ultimatley controlled or directed by one management or association of ultimate management.

Section 8. The term "store" as used in this Act shall be construed to mean and include any store or stores of any mercantile establishment or establishments which are owned, operated, maintained or controlled by the same person, firm, corporation, co-partnership or association, either domestic or foreign, in which goods, wares or merchandise of any kind are sold at retail. Provided, however, the term "store" shall

not include filling stations engaged exclusively in the sale of gasoline and other petroleum products.

Section 9. Any person, firm, corporation, co-partnership or association who shall violate any of the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than Twenty-five Dollars nor more than One Hundred Dollars, and each and every day that such violation shall continue shall constitute a separate and distinct offense.

Section 10. Any Tax Collector knowingly issuing a license to any person when false statements have been made in the application for such license without requiring the correction of such false statement and issuing the license in accordance with the corrected application, and any Tax Collector who knows of any person liable for license tax imposed by this Act or who transacts business without such license in violation of this Act, without giving written notice of such facts to the prosecuting officer whose duty it would be to prosecute such offender, and any prosecuting officer whose duty it would be to prosecute any person for the violation of this Act, after having received written notice from the Tax Collector of the failure of such person to procure a license, (unless the investigation of such prosecuting officer shall disclose that such person was not liable for such tax), shall be subject to removal from office, and it shall be the duty of the Governor to remove him from office.

Section 11. A County license tax of twenty-five per cent of the State license tax shall be levied and imposed upon each store as herein defined and each incorporated municipality of the State of Florida is authorized to levy a municipal license tax of twenty-five per cent of the State tax imposed by this Act, provided that the tax levied by or for the several counties and municipalities shall be graduated only on the number of stores situate in such county or municipality, respectively, notwithstanding the applicant may own other stores beyond the limits of such county or municipality, as the case may be. In all cases coming within this Section of this Act, where the license must be obtained from the Comptroller of the State of Florida, the county and municipal taxes shall be paid by the applicant to the Comptroller and im-

mediately remitted to the proper officers of the several counties and municipalities of the State.

Section 12. All licenses provided for in this Act shall be issued by the County Judges of the several counties of the State of Florida and turned over to the Tax Collector of their respective counties and the Comptroller of the State of Florida, to be issued and delivered to the licensees upon the payment of the license tax herein provided; provided, however, that before any such license shall be issued and delivered by the Comptroller, or any Tax Collector in the State of Florida, the same shall be countersigned by the Comptroller or Tax Collector, as the case may be.

Section 13. The County Judge of each county shall be entitled to a fee of Twenty-five Cents for each license issued by him, which shall be paid out of the filing fee herein provided for.

Section 14. All laws and parts of laws in conflict herewith are hereby repealed. This Act shall take precedence over any other Act passed by the Legislature of the State of Florida, at the session of 1931, which may appear to be in conflict herewith, and shall be in full force and effect notwithstanding any provisions of any other Act or part of Act.

Section 15. If any section, provision or clause of this Act shall be declared invalid or unconstitutional, or if this Act as applied to any circumstances shall be declared invalid or unconstitutional, such invalidity shall not be construed to affect the portions of this Act not so held to be invalid or the application of this Act to other circumstances not so held to be invalid.

Section 16. This Act shall take effect immediately upon its becoming a law.

Became a law without the Governor's approval on July 3, 1931.